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DEC 31 2007

In re Application of
Need et al.
Application No. 10/717,307
Filed: November 18, 2003
Attorney Docket No. MS
305610.01/6000.314US0

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: **OFFICE OF PETITIONS**
: **DECISION ON PETITION**
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This is a decision on the petition filed July 27, 2007, requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed June 6, 2007 be withdrawn. The \$400.00 petition fee has been received.

The petition is granted.

Petitioners assert that that the terminal disclaimer filed on June 6, 2007 was filed in error.

Pursuant to MPEP 1490 (VII)(A), if timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before the reexamination certificate issues.

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "un-happy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. Since the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

The undersigned has consulted with the examiner in charge of this application, and has found that the examiner concurs with petitioners' assertion. Accordingly, the terminal disclaimer filed on June 6, 2007 is withdrawn. It should however be noted, that the terminal disclaimer filed June 6, 2007 is being withdrawn in favor of the terminal disclaimer filed on July 27, 2007. USPTO records for the above-identified application have been changed consistent with this decision.

This application is being referred to AU 2194 for further processing.

Telephone inquiries related to this decision should be addressed to the undersigned at (571) – 272-3215

A handwritten signature in black ink, appearing to read "Charlema Grant", with a stylized flourish at the end.

Charlema Grant
Petitions Attorney
Office of Petitions